

BUILDING BILL 2010

Second Reading

Resumed from 21 June.

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [9.06 pm] — in reply: I once again thank members for their participation in the second reading debate and to all members on both sides who have indicated their support for the second reading. Hon Linda Savage and Hon Lynn MacLaren made thoughtful contributions about this detailed bill. The Building Bill provides for a whole new set of machinery to administer the areas that it deals with. Both of those speakers observed that this was a substantial, evolutionary change that builds upon the experience of the past, and they acknowledged that some overdue reforms were needed to be made to bring us into the twenty-first century, or whatever their expression was. Although I am aware of the time and stage we are at in this autumn session, in my reply, although I will speak reasonably quickly, I want to do justice to their contributions.

We have had the benefit of time since we sat last night. I acknowledge the work that officers from the Department of Commerce's Building Commission division have done to research some of the matters that were raised. I will now impart that information to the house by way of closing the second reading debate. I refer, in the first instance, to the contribution of Hon Ljiljana Ravlich, who raised some pertinent questions that need to be responded to, so that those responses are on the record, to coin a phrase. The first matter that my friend raised was the question about the penalties associated with transgressions, or the failure to adhere to certain requirements contained in this all-encompassing scheme. She asked whether I could provide the chamber with a schedule containing the clause number, the clause title and penalty provided in the bill.

Hon Ljiljana Ravlich: I found it. It was in the back of the explanatory memo.

Hon SIMON O'BRIEN: I have a schedule of penalties here. I will not table this document, but I will pass it around to the member to make sure that she has all the information that is required. The honourable member also asked about the construction work on mining projects, noting that this was not covered by the legislation, and wanted to know why that is the case. I will discuss briefly how we deal with buildings in construction and mining projects. The existing legislation is very unclear on what is a building and which mining and infrastructure works require building approval. The policy intent of the previous government when it started the reform in this area was to provide a clear distinction between things that should be regulated under the Building Bill and what should be left to be regulated under different processes. This government has continued that policy. Permits are required for residential or recreational buildings, or buildings generally that have public access to them, and that will come under this regime. That will continue. Buildings that are incidental to mining operations or to exploiting petroleum and other resources are exempted from the need to get a building or an occupancy permit. That covers structures such as machinery sheds, storage sheds, control rooms and the like. All those structures will be required to meet the building standards and other provisions of the bill, such as work affecting other land, but permits will not be needed for them because they are already regulated through other processes, such as the Mines Safety and Inspection Act, and we do not want to add an extra layer of red tape.

Questions were also asked about the degree, amount and nature of all forms of consultation about this bill. I will give members a bit of a summary. The development of complex and all-embracing schemes such as this one takes a while. I gave an address earlier today about commercial tenancy, and I noted that that review had been done in 2003. Sometimes it takes a while for these things to come to fruition, and that is the case with this bill. I reassure members that there has been extensive consultation with all stakeholders. Some of that consultation may have occurred in a time frame in which they have forgotten some of that consultation. There has been, and there continues to be, substantial consultation with stakeholders, including the Western Australian Local Government Association, individual local governments and local government officers. In 2004, letters were sent to all local governments seeking views on previous proposals for building acts, so it obviously goes back before then. In 2006, there was a discussion paper that received 109 formal written submissions, 59 of which were from local governments, which will, of course, be fundamentally affected by this legislation. A stakeholder reference group, with WALGA and regional and metropolitan local government members, has met 14 times since 2006. There are six local government representatives on a working group that has met 10 times to prepare the drafting instructions. There is currently a process and forms working group with six local government representatives. It has been meeting fortnightly since October 2010. In 2007, and again in 2010, information seminars were held in Perth and in major regional centres that attracted strong local government attendance. In addition, specific briefings and workshops have been held with WALGA, some local governments, and building surveyor groups. In 2010, the Building Commission division even set up a stall at Local Government Week to consult directly with councillors. Last year, letters were sent to each local government with details of the bill and seeking feedback on costs and other matters. This year alone the Building Commission has held sessions in Melville with

Local Government Managers Australia. It has also had regional workshops with other like groups in Albany, Broome, Bunbury, Capel and Dalwallinu. Other stakeholders have had similar levels of consultation.

The direct costs associated with the bill, such as permit fees and levies, will remain and, in some cases, will be broadly the same. We considered the issue of rates and levies and so on in some detail in debate on the other package of building services bills. Therefore, this bill before us does not fix the fee that local governments or private building surveyors can charge for certification either. They can choose to keep the current fees or to charge higher fees, and hopefully deliver better services. But the key to anyone engaged in these processes in the future and to getting better service is to do the certification that this regime allows for in parallel and in concert with the design and documentation phases, so that owners know that what is being drawn will be approved and, therefore, time will be saved. That offers big opportunities for savings in costs on projects big and small.

Hon Lynn MacLaren raised a similar question and reported the experience in the eastern states, where the cost to certify a house has doubled. We have protection against this, and this was at the request of local governments, because they want to serve their ratepayers. We have retained the right to use the current uncertified process at the current fees for domestic buildings. Therefore, if new home builders do not want to change to this new system, they do not have to. Homeowners who want to use the certified process for houses can choose to pay for private certification if they see a benefit; otherwise they can retain the uncertified processes, although that allows for a longer time frame, as is the case now for local governments to consider those matters.

I was asked to provide some information on whether a local government will be liable for non-compliant buildings. A local government will be liable only for damages caused by its negligence, not someone else's. Under our current system of proportionate liability, the local government will not be liable for errors caused by others. I understand that the main concern of local governments is that they might be held liable for an error in a certificate from a private registered building surveyor. Clause 144 specifically provides that the Building Bill does not create a duty of a permit authority to check the accuracy of a fact or the soundness of an opinion asserted in a certificate. That is the responsibility of the certifier. In addition, of course, clauses 37 and 38 further protect local governments by making it clear that the builder or demolition contractor is responsible for the building meeting the applicable building standards.

In relation to the question of the ability of a local government to employ qualified building surveyors, given that there is likely to be a much reduced income stream, I will briefly describe the consideration that has been given to this issue by successive governments. Unlike the current legislation, the Building Bill does not require a local government to employ a building surveyor, although we suspect that a lot—possibly most—will decide that they want to do that, because that is best for their service model. Therefore, they do not need to get caught in a bidding war for scarce resources unless they wish to engage in that particular line of business. Local governments are only required to provide building surveyor services for uncertified applications for domestic buildings, as I discussed earlier, but they can contract this work out or share it with other local governments through a special permit authority. I know already—Hon Ljiljanna Ravlich has probably spoken with them as well—that some local governments are looking at changing their business model, having shared certain responsibilities and functions, to offer services, using some retained personnel, to other local governments. Therefore, there are a number of ways in which they are branching out in their own business, and that will augment their own revenue base as well.

Hon Ljiljanna Ravlich: They will have less than their revenue, though, because of their function.

Hon SIMON O'BRIEN: They will, because of the changed function. There is no doubt that some transition will be required, and I will come to that point in a moment, because I know that that is something that the member is concerned about, as am I. I accept that local governments cannot be too sure how many of their qualified building surveyors will remain with them and how many will head for private firms or to other local governments. This is the nature of the sort of change that has developed over the years and that is now reflected in this bill. However, that will evolve over time as people get used to the new framework. Importantly, we have given local governments a lot of flexibility to manage costs and match capabilities by deciding what services they want to offer and what they charge for them. Just as an aside, going back to the question of charges and penalties, the honourable member asked early in her contribution about the need for penalties because they will end up as a revenue stream for the Building Commission. I am advised that the Building Commission funding model does not include any funds from penalties for offences against the proposed act; in fact, under the legislation, offences are policed by the permit authority and local governments, which will instigate proceedings to extract penalties rather than the Building Commission in most cases. There are some limited cases in which the Building Commission will pursue that.

Hon Ljiljanna Ravlich: Does that mean that all the penalties that are raised under this bill will be shared by local governments and/or their subsidiaries or whatever?

Hon SIMON O'BRIEN: No. The power to prosecute, issue infringements or use whatever mechanism applies in a particular case will be applied by the permit authority, which will in many cases be the local government. The member knows there are some exceptions to that. Even in a case in which the Building Commission takes some action, the revenue extracted as penalties does not go to the Building Commission; it goes into general government funds.

The honourable member also asked me about mandating the six-star rating for all new homes under this legislation. The simple answer that I can fairly give is, no, that is not in this bill. What we already have in place deals with that and it will continue to deal with that after this legislation is up and running. Therefore, strictly speaking, I do not think we need to place too much attention on this. However, for the general benefit of members and for the record, part 3 of this bill lets us prescribe building standards, which is a capacity that we already have under existing legislation so we will keep that going. The standard prescribed now, which will continue in the future, will be the National Construction Code. All commercial and residential buildings are required to meet the energy-efficiency standards set out in the National Construction Code. Commercial buildings will need to comply with section J of the code, which does not give star ratings. Residential buildings are assessed by one of three rating tools to get a star rating or they can be approved by other equivalent and acceptable construction methods that I will not go into now. However, the National Construction Code energy-efficiency standard for residential buildings is the so-called six-star standard. It will be mandatory for new buildings in Western Australia from May 2012. The energy-efficiency standards that currently apply are the five-star standards introduced in 2005, which were augmented with some additional requirements for water heating and water-use requirements in 2007. They are called the five star-plus standards and they currently apply as the bottom level requirement.

Hon Lynn MacLaren raised some general concerns from the Western Australian Local Government Association, the Master Builders Association and the Housing Industry Association. I had lots of meetings with them as well, as I am sure a number of members have. I will deal with some of those inquiries by simply saying that all three organisations are in the stakeholder reference group and they have all been actively involved so far and they will continue to be actively involved in the drafting of regulations for this legislation. I will add a bit more to that because I know that Hon Ljiljanna Ravlich was concerned about this. Hon Ljiljanna Ravlich read in some of the concerns of the City of Armadale, which it holds in common with other local governments in the large outer suburban growth councils in particular.

In March this year there was agreement to separate the implementation of the Building Bill 2010 from the other building services bills. We need to get this bill up to complete the suite of bills, because there are some interchangeable definitions and whatnot that are required. This bill needs to go through so that those other bills that we have dealt with can be introduced. I appreciate the assistance of the house at this time in expediting that to some extent. What we agreed to in March this year is, basically, that we will bring in all the complaints and disputes and registration matters from 1 July—that is our intention—which is not far away, but delay the Building Bill system until 1 October, as requested by stakeholders including local governments, to allow a bit more comfort time to work up some of the issues. That gives me the capacity to have some further meetings. I already have the Building Commission division working hard on an ongoing rolling pattern of consultations and on setting up meetings for me and my staff to be involved in to ensure that we make the processes for that transition as easy as we can. It is a big transition and there are issues, there is no doubt about it, but we will do that.

Hon Ljiljanna Ravlich: What about Armadale specifically?

Hon SIMON O'BRIEN: Yes, there has been contact with the City of Armadale. I reassure the member that I will make a point of making sure that Armadale is included in those discourses. Good work is being done now to make sure that the transitional matters are understood and that we work through the issues that were being highlighted. I will give that undertaking. Similarly, I have also had some discussions with the City of Mandurah; it is not forgotten in this. One or two others have specifically come to notice, but everyone will have the opportunity to liaise closely with the Building Commission and with government to make sure that their concerns are taken on board.

I would like to draw my remarks to a close, but I felt it was necessary to spend, even at this hour, a bit of time to respond to the sort of things that have been raised. I would like to provide assurance to the members who participated that the homework has been done to address the concerns that have been discussed. Again, I would like to thank members for the way they have contributed, but also for the way that I know they have been interacting with the Building Commission people and with local governments behind the scenes to participate constructively in this debate.

I will conclude with the matter that Hon Lynn MacLaren raised about a cost-benefit analysis. The bill was submitted to the regulatory gatekeeping unit of Treasury in 2010 before being introduced to Parliament. That is a requirement we have—it is a hurdle we have to jump. Treasury's response was that a full regulatory impact

assessment—it does a preliminary one, of course—was not required because the proposal is unlikely to have significant negative impacts on business, consumers or the economy. I think members from all sides would say amen to that because we are trying to create an environment that enables all involved—builders or buyers—to get about doing the things they need to do as efficiently and safely and cost-effectively as they can, thereby making a significant contribution to the future. I hope that this legislation, when enacted, will stand the test of time over the next 50 or 60 years in providing those benefits to the people of Western Australia.

Hon Ljiljanna Ravlich: Has any work been done to ensure that there is a suitable supply of, for example, building surveyors? I ask that question because the whole model is predicated on surveyors playing a critical role, and in the event that there is an insufficient number of building surveyors, the whole process may become a logjam.

Hon SIMON O'BRIEN: I am not able to answer that question in detail now. But this is a matter that has been exercising a lot of minds, and it is one of the drivers of this legislation, because we have had shortages in various related occupations previously. One of the aspects of the development of this system is that it will provide flexibility to ensure that those skilled occupations are available. I am touching now on the capacity for local governments to extend their operations through the device of making their building surveyors, if they retain them, available to other local governments. I commend the second reading to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Michael Mischin) in the chair, Hon Simon O'Brien (Minister for Commerce) in charge of the bill.

Clause 1: Short title —

Hon LYNN MacLAREN: The minister has just finished talking about the availability of qualified surveyors. The information I have is that there are only 200 building surveyors in Western Australia. There is a concern about the shortage of building surveyors. Has the minister done any workforce planning, or has he started talking with the local colleges of technical and further education about how building surveyors can achieve the necessary qualification? My information is that building surveyors will need to either go over east or study via distance education, What workforce planning has been done for that?

Hon SIMON O'BRIEN: I thank the member for her interest in this matter, and other members as well. Insofar as this directly touches upon this bill, yes, I assure the member that the Building Commission division of the Department of Commerce is mindful of this matter. But, more than that, some time ago, money was allocated to TAFE, I think in the amount of \$50 000, to assist in, as the member put it—I am using a generalised term here—workforce planning. I understand that about 250 surveyors have been registered, both existing and former, and there are more in the pipeline. The reason I mention that—because we did not create them, but we are encouraging this career path—is that now that we have a better handle on what the workforce capacity is, one of the side benefits of this process will be to assist in that planning process. I do not intend to spend any more time on that. I hope that meets the member's needs at this time.

Hon LYNN MacLAREN: My second question regards the cost-benefit analysis that Treasury undertook. The other concern we have is about the impact on local governments' revenue, because this is a fee that is normally charged by local governments and therefore could be in their budget cycle for this coming year. The minister mentioned that the cost-benefit analysis that Treasury undertook looked at businesses, but I did not hear him say that it looked at the impact on local government.

Hon SIMON O'BRIEN: My apologies for that oversight. The Building Bill proposals that the member has before her have been subject to an ongoing scrutiny of cost and benefit, not least by the local government lobby. I think I have indicated through all the various forums—many of them are still up and running and will continue—that there is an ongoing scrutiny of cost, amongst other things, because this is a fundamental change to the way in which things will work and connect together. The government believes that it will be better, and we have worked with all the stakeholders. I think the member knows from her own experience, as I do from mine as a private member, that local governments are particularly sensitive to this. However, local government is actively involved with this legislation and working with the forums to say, "Okay, this is the way we've got to go; let's make it work".

I can tell the member that ACIL Tasman prepared a report on local government costs in 2006, further cost information was obtained from local governments in 2010, and comparisons were made of fees against potential savings from reduced delays. Importantly, however, different local governments will be doing different things depending on their structures. Big local governments—the Stirlings, Armadales and others—will have a different

business or operational model, if you like, from those of the Town of East Fremantle and other places. That is part of the whole point of this legislation—that we have that flexibility built in—and we think it will create a better dynamic in the future.

Clause put and passed.

Clauses 2 to 19 put and passed.

Clause 20: Grant of building permit —

Hon SIMON O'BRIEN: I move —

Page 15, line 15 — To delete “permit;” and insert —

permit, unless the building work is of a kind specified by the regulations;

Members will recall that in a very useful committee stage during cognate debate on the building services bills, a need was identified; I think Hon Giz Watson and others were active participants. This is a vehicle to make sure that we can split the introduction of various parts of the new system. We were particularly concerned to have the facility to delay requirements for registration in country areas. This is the device that I undertook to implement, and that is why I now move an amendment along these lines.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 21 to 203 put and passed.

Title put and passed.

Bill reported, with an amendment.

Leave granted to proceed forthwith through remaining stages.

Report

Report of committee adopted.

Remaining Stage — Standing Orders Suspension — Motion

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [9.41 pm] — without notice: I move —

That so much of standing orders be suspended as will enable the third reading of the bill to be taken at this day's sitting.

This is an unusual motion and members will know from my previous management of bills that I much prefer that we allow successive days to elapse, but members are also aware that we are approaching the end of the session. It was the will of this house some months ago in debate that an amendment be moved and, of course, if we are to have an amendment considered by another place before Parliament rises, we will have to deal with this bill now. That is why I seek the suspension of standing orders.

Question put and passed with an absolute majority.

The PRESIDENT: Just for the information of members, an absolute majority was required for that vote. Having counted the house, an absolute majority is present so that the bill can be read a third time.

Third Reading

HON SIMON O'BRIEN (South Metropolitan — Minister for Commerce) [9.42 pm]: I move —

That the bill be now read a third time.

In so moving, I thank the house for its accommodation.

Question put and passed.

Bill read a third time and returned to the Assembly with an amendment.